

Lord Justice Leveson:

1. The Terms of Reference of this Inquiry mandate (among other things) that I inquire into “the culture, practices, and ethics of the press, including ... contacts and the relationships between national newspapers and politicians, and the conduct of each”; the purpose is to make recommendations as to “the future conduct of relations between politicians and the press”. As a result, notices were issued under s. 21 of the Inquiries Act 2005 requiring witnesses to deal with a large number of questions addressing these issues. One of the consequences is that, fulfilling the terms of my requirement, Mr Rupert Murdoch produced a series of e mails which related to the contact between News Corporation and the office of the Secretary of State for Culture, Olympics, Media and Sport both before the Secretary of State assumed responsibility for the bid by News Corporation for the remaining shares in BSkyB and subsequently.

2. Conscious of the likely effect of this evidence, on the afternoon of Monday 23 April, I said:

“I understand the very real public interest in the issues that will be ventilated by the evidence. I also recognise the freedom that permits what is said to be discussed and the subject of comment in whatever way is thought fit, and I shall be interested to see how it is covered. For my part, I shall approach the relationship between the press and politicians from an entirely non-partisan judicial perspective, which I have no doubt is the reason that I was given this remit. I would hope that this approach will be made clear.”

3. Since he was the recipient of a number of them, it fell to Mr James Murdoch to produce the e-mails which, on Tuesday 24 April, he did. They formed the basis of much immediate comment and, as a result, on Wednesday 25 April, I returned to the topic and said:

“In the light of the reaction and considerable commentary last night and this morning, it's appropriate for me to say a little more. This necessarily involves explaining something of the judicial process. I understand entirely the reason for some of the reaction to the evidence yesterday, and in particular, to the emails about which Mr Murdoch was asked, but I am acutely aware, from considerable experience, that documents such as these cannot always be taken at face value and can frequently bear more than one interpretation. I am absolutely not taking sides or expressing any opinion, but I am prepared to say that it is very important to hear every side of the story before drawing conclusions. In due course we will hear all the relevant evidence from all the relevant witnesses, and when I report, I will then make the findings that are necessary for me to fulfil the terms of reference that the Prime Minister set for me. In the meantime, although I have seen requests for other inquiries and other investigations, it seems to me that the better course is to allow this Inquiry to proceed. When it is concluded, there will doubtless be opportunities for consideration to be given to any further investigation that is then considered necessary.”

4. On the same day, questions were addressed in the House of Commons both to the Prime Minister and the Secretary of State arising out of the e-mails. Further, on the following Monday, 30 April, the House returned to the issue.

5. Prior to the opening of Module 3 by Mr Robert Jay Q.C., on Thursday 10 May, I took it upon myself to emphasise the approach of the Inquiry. In the context of identifying what Module 3 would not be dealing with, I said:

“[A]lthough I recognise that some have sought to make political points arising out of the evidence as it has emerged and I am not so naïve that I do not understand that there are elements of what I am doing that are likely to be of party political interest, I have absolutely no intention of allowing the Inquiry to be drawn into such a debate and will vigorously resist any attempt to do so. I am approaching my task in a politically neutral fashion and intend to ensure that the principles of fairness which I have sought to maintain throughout apply equally to this module. I will be considering the way in which politicians of all parties have engaged with the press.”

6. More specifically, in relation to the BSKyB bid, I said:

“I will look at the facts surrounding the News Corporation bid for the remaining shares of BSKyB, I will do so in order to investigate the culture, practices and ethics of the relationship between the press and politicians. It was because of the need to examine the facts fairly that, on 25 April, I spoke about the need to hear every side of the story and that although I had seen requests for other inquiries and other investigations, it seemed to me that the better course was to allow this Inquiry to proceed. That may cause me to look at the Ministerial Code and its adequacy for the purpose but I will not be making a judgment on whether there has been a breach of it. That is simply not my job and I have no intention of going outside the Terms of Reference that have been set for me.”

7. For the avoidance of doubt, I see the significance of the way in which the bid was handled both by the Secretary of State for Business, Innovation and Skills and the Secretary of State for Culture, Olympics, Media and Sport as evidencing manifestations (to return to the terms of reference) “of the relationships between a media interest and politicians, and the conduct of each”.

8. Meanwhile, on 1 May 2012, the Secretary of State for Culture, Olympics, Media and Sport provided written answers to a number of Parliamentary questions raised by Mr George Howorth M.P. concerning guidance issued to his special adviser on the latter’s role as a point of contact between his Department and BSKyB and NewsCorp. In the course of answering those questions, Mr Hunt made it clear that the Prime Minister had indicated that he would consider whether the issue should be referred to the independent adviser following his, Mr Hunt’s, appearance before this Inquiry. He was asked to place in the Library a copy of all the papers relating to this appointment of his special adviser; this question was followed by other questions asking for documents to be placed in the Library. Mr Hunt responded to the effect that he was in the process of preparing his evidence which would include

all relevant information held by him and his Department in relation to the bid and anticipated that as much of this evidence as possible would be published, emphasising that this was a matter for the Inquiry.

9. On 14 May, a number of Points of Order were raised in the House of Commons. Those that are relevant to this analysis are as follows (see *Hansard* 14 May 2012 columns 278-9):

“Ms Harriet Harman (Camberwell and Peckham) (Lab): On a point of order, Mr Speaker. Lord Justice Leveson is conducting a public inquiry on the media, and will call a number of hon. Members, including Ministers, to give evidence. It is an important inquiry, and we await the outcome, but will you clarify that while the Leveson inquiry proceeds with its work, it remains the case that the Secretary of State for Culture, Olympics, Media and Sport is accountable to this House? Is it in order for him to say that he will not answer questions from hon. Members in this House because he will instead tell Lord Leveson the answers, and to say that he will not place documents in the Library because he is giving them to Leveson? Will you confirm that he refuses to answer the question not because he is prevented from doing so by the Leveson inquiry, but because he does not want to? Of course the Secretary of State must give his evidence to Leveson whenever he is called to do so, but surely he cannot use that as an excuse to evade his accountability to this House.

Mr Speaker: I am grateful to the right hon. and learned Lady for giving me notice of her point of order. My response is twofold. First, as a matter of general principle, I should make it clear that the accountability of a Minister to this House is not diluted or suspended by a Minister's engagement with inquiries or other proceedings outside this House. When parliamentary questions to Ministers are tabled, those questions should receive substantive and timely answers. Secondly, if Ministers are providing written documents to an inquiry, it would be a courtesy to the House, and help with the discharge of its scrutiny function, if such documents were also provided to the House. I hope that is clear. ...

Mr Edward Leigh (Gainsborough) (Con): On a point of order, Mr Speaker. When we have had scandals or so-called scandals in the past, our Select Committees have constantly been fobbed off, and no information—e-mails, for instance—have been given to them. Inquiries such as Leveson are given everything. Surely the time has come to proclaim this truth: this House is supreme and sovereign, and we should get everything first.

Mr Speaker: I hope that over the last two and three-quarter years I have given some indication, not just by voice but by conduct, that I believe that this House should be pre-eminent. It should be treated by whomsoever is in government with

courtesy and consideration. It should be regarded as a priority and a matter of honour to keep the House informed and to facilitate the House's discharge of its scrutiny function, so I do not dissent from anything that the hon. Gentleman has said. ...

Chris Bryant: Further to that point of order, Mr Speaker. Can you confirm that article 9 of the Bill of Rights makes it clear that no other body, including a court, can impeach or question a proceeding in Parliament, so the only body that can adjudicate on whether a Minister has misled the House, whether deliberately or inadvertently, is this House, and that Lord Leveson has no power to do so?

Mr Speaker: I believe the hon. Gentleman is absolutely correct in his statement and interpretation of article 9."

10. The first point to make is that I fully recognise the impact of Article 9 of the Bill of Rights: in the same way that I do not consider it any part of my task to determine whether or not any Minister has acted in breach of the Ministerial Code, so I do not intend to consider (let alone adjudicate) on the issue of whether or not the House has been misled. I am not implying that Mr Bryant suggested otherwise but I repeat that my task, simply expressed, is to consider the relationship between the press and politicians, and the conduct of each in order to make recommendations, if I consider such to be necessary and appropriate.
11. As for the evidence that the Inquiry has obtained, it is not for me to say anything about what should or should not be placed before Parliament and when that should happen. In particular, I am not, in any way, seeking to challenge the ability of Parliament to proceed as it thinks appropriate. Potentially, however, its decisions will have a real impact on the Inquiry and it is only appropriate that I illuminate them.
12. That brings me to the substantive point raised by these Parliamentary questions. It is, of course, open to the Prime Minister to take whatever step he wishes in relation to allegations concerning one of his Ministers, and equally open to Members of Parliament to ask whatever questions they wish in connection with the performance of their duties. When I suggested that the better course was to allow this Inquiry to proceed and that I was anxious to do so in a politically neutral fashion, intending to ensure that the principles of fairness were maintained, I had in mind that I intended to require both Mr Frederic Michel and Mr Adam Smith to provide statements and give evidence, and that this exercise should be conducted in an orderly fashion so that each (along with the Secretary of State) could explain their respective roles, in public, before the Inquiry. I anticipate that this will all be done before the end of May.
13. I also had in mind that the Inquiry proceeds pursuant to the statutory authority provided to me by Parliament in the form of the Inquiries Act 2005 which, by section 17(3) makes it clear that "[i]n making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness ..." Fairness has thus been behind my approach to disclosure of evidence. My present order, dated 26 April 2012, is in these terms:

“1. Prior to its publication on the Inquiry website, no witness statement provided to the Inquiry, whether voluntarily or under compulsion, nor any exhibit to any such statement, nor any other document provided to the Inquiry as part of the evidence of the witness, not otherwise previously in the public domain, shall be published or disclosed, whether in whole or in part, outside the confidentiality circle comprising of the Chairman, his assessors, the Inquiry team, the core participants and their legal representatives.

2. This order is made under Section 19(2)(b) of the Inquiries Act 2005 and binds all persons including witnesses and core participants to the Inquiry and their legal representatives and companies, whether acting personally or through their servants, agents, directors or officers or in any other way.”

14. I appreciate that this Order does not impact on the extent to which matters can be raised in Parliament but I would hope that the respect that I accord to Parliament and the success (with, I hope, mutual respect) that has permitted the various Committees of the House to pursue their business while I have proceeded with the Inquiry will cause Parliament, when deciding how to manage its procedures, to have regard to the consequences for the Inquiry. As I have already said, I would be very concerned if the advantage obtained by core participants of early sight of statements were used to affect the fairness that I am seeking to achieve. I add, immediately, however, that the politician who did disclose such information apologised for so doing and I fully accept was acting without appreciating the impact of the order.
15. In relation to the BSKyB bid, it is a matter for Parliament to decide how far it is appropriate to require either the Secretary of State or anyone else to go. Suffice to say, it is but a small (albeit potentially significant) part of the evidence that I have been obtaining on the relationship between the press and politicians and if I did not think that I could adduce that evidence fairly, I would not do so. Putting it another way, the Inquiry permits the public examination of this material in an independent, impartial manner, visible to all as it happens, after which statements will be published and whatever enquiries or investigations that either the Prime Minister or Parliament wish to engage upon will be a matter for them. If, however, the evidence were to have been forced into the public domain and be the subject of argument and debate in advance of the witnesses giving evidence, so that minds are potentially made up and conclusions reached, my immediate reaction would be that I would consider it unfair to subject the witnesses to further questions before this Inquiry for that would inevitably require them not only to answer the concerns of the Inquiry but also those of every other analyst or commentator whether from the political or press arenas. My attempt to maintain political neutrality would have failed. In that event, I might well conclude that it is simply not appropriate to look at this evidence at all, and I would then abandon Mr Michel and Mr Smith as witnesses and restrict the Secretary of State to other areas of his evidence.
16. Over the next month, a large number of politicians are due to give evidence on topics that I have no doubt will engage considerable public interest. One reading of the question posed by Mr Leigh might be a call for all their evidence first to be

given to Parliament and then to the Inquiry. I do not know whether that has ever been suggested at other public inquiries of whatever status but to require that to happen could equally undermine the fairness of the procedure and thus make compliance with s. 17(3) all the more difficult. Again, whatever decisions might be taken for the future, I would hope that sufficient respect for my process will allow it to proceed without interruption and without effectively rendering the Order which I have made entirely academic.

17. I hope that allowing the Inquiry to proceed as it plans will not amount to a serious inconvenience either to Parliament or to the political process generally. On the contrary, I hope that the process which I have put in place is well placed to assist both. The present problem arises only out of sequencing the evidence and, given the timetable that I have explained, I would hope that the overall period within which the evidence will be heard assuages the concerns which have been expressed.